

ORIGIN/ACTION

DEPARTMENT OF STATE

84  
**AIRGRAM**

FOR RM USE ONLY

CA-4658,

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HANDLING INDICATOR

NO.

TO : ALL AMERICAN DIPLOMATIC POSTS  
 US MISSION BERLIN  
 Amconsulate SINGAPORE  
 Amconsulate HONGKONG  
 Amconsulate GENEVA  
 Amconsulate JERUSALEM

FROM : Department of State

DATE:

OCT 30

SUBJECT: Legal Basis for the Quarantine of Cuba

REF: CA-4473

The following paragraphs should be added to the legal memorandum contained in the referenced airgram.

"(c) Article 2, paragraph 4

"The measures of defensive quarantine are compatible with Article 2, paragraph 4 of the Charter. This provision reads as follows:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

The defensive quarantine rests ultimately upon actions by armed forces for its implementation. Thus, some threat, and potentially some use, of armed force is involved. These elements, however, are not in contravention of the above-quoted provision. In appraising these elements in relation to the obligations of Article 2, paragraph 4, it is to be noted that only threats or uses of force which are inconsistent with the Purposes of the United Nations are covered by the provision. This is seen from the presence of the word "other" in the concluding clause of the paragraph. Even if the defensive quarantine could be thought to impinge upon the territorial integrity or political independence of some State or States, it would not be contrary to Article 2, paragraph 4, unless the quarantine were inconsistent with the Purposes of the United Nations.

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FORM 4-62 DS-323

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NEA - Mr. Dinsmore

LEGAL BASIS FOR  
QUARANTINE

SMITH-BUNDY

BELK

BURRIS

DAVIS

DUNCAN

FELDMAN

FORRESTAL

HIRSCH

JOHNSON

KILGORE

KILGORE

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" As shown earlier, the defensive quarantine is in accordance with Chapter VIII of the Charter concerning regional arrangements. Just as the collective action for peace and security which the Security Council may take under Chapter VII does not contravene Article 2, paragraph 4, so also measures taken by a regional arrangement in conformity with Chapter VII do not contravene this Charter provision.

" A threat of force in contravention of the Charter does not arise from the defensive quarantine, but clearly did arise from the Soviet introduction of long-range offensive missiles into Cuba.

" Finally, it is to be observed that the measures taken in pursuance of the recommendation of the Organ of Consultation under the Rio Treaty do not constitute a blockade. There is no state of war or state of belligerency. The defensive quarantine of Cuba is a carefully limited measure, proportionate to the threat and designed solely to prevent any further build-up of offensive nuclear missile bases in Cuba."

RUSK

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